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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10

11 TRACY L. B.,

12 Plaintiff,

13 v.

14 KILOLO KIJAKAZI,
15 Acting Commissioner of Social
16 Security,
Defendant.

Case No. CV 5:22-02185-RAO

**MEMORANDUM OPINION AND
ORDER**

17 **I. INTRODUCTION**

18 Plaintiff Tracy L. B.¹ (“Plaintiff”) challenges the Commissioner’s denial of
19 her application for a period of disability and for disability insurance benefits and
20 supplemental security income (“SSI”). For the reasons stated below, the decision
21 of the Commissioner is **REVERSED**.

22 **II. SUMMARY OF PROCEEDINGS**

23 On January 9, 2020, Plaintiff filed applications for disability insurance benefits
24 and SSI, alleging disability beginning October 30, 2019. (AR 62-71, 72-81.)
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26 ¹ Plaintiff’s name is partially redacted in compliance with Federal Rule of Civil
27 Procedure 5.2(c)(2)(B) and the recommendation of the Committee on Court
28 Administration and Case Management of the Judicial Conference of the United
States.

1 Plaintiff's applications were denied on June 10, 2020 (AR 82-83), and upon
2 reconsideration on March 1, 2021 (AR 137, 144). Plaintiff requested a hearing before
3 an administrative law judge ("ALJ") (AR 151-53), which took place telephonically
4 on September 22, 2021 (AR 36).

5 On October 26, 2021, the ALJ issued her decision. (AR 22-29.) At **step one**,
6 the ALJ found Plaintiff had not engaged in substantial gainful activity since October
7 30, 2019. (AR 24.) At **step two**, Plaintiff had a severe impairment of degenerative
8 disc disease status post lumbar fusion. (AR 25.) At **step three**, Plaintiff did not have
9 an impairment or combination of impairments that meets the severity of the listed
10 impairments in 20 C.F.R. §§ 404.1520(d), 404.1525, 416.920(d), 416.925, and
11 416.926. (AR 25.) The ALJ assessed that Plaintiff had the residual functional
12 capacity ("RFC") to perform light work as defined in 20 C.F.R. §§ 404.1567(b) and
13 416.967(b) with exceptions: Plaintiff cannot climb ladders, ropes or scaffolds; can
14 occasionally stoop, balance, kneel, crouch, crawl, and climb ramps and stairs; must
15 avoid concentrated exposure to hazards including dangerous moving machinery,
16 uneven terrain, and unprotected heights; and can frequently, but not constantly, reach
17 overhead bilaterally. (AR 26.) At **step four**, the ALJ determined that Plaintiff was
18 capable of performing past relevant work as a hairstylist, which is listed as light,
19 semi-skilled work with a specific vocational preparation rating of 6 and does not
20 require the performance of work-related activities precluded by Plaintiff's RFC. (AR
21 29.) The ALJ made no finding as to **step five** because Plaintiff was deemed able to
22 perform past relevant work as a hairstylist at step four. (*See id.*)

23 On December 9, 2022, Plaintiff filed suit challenging the denial of her benefits
24 and SSI. (*See* Dkt. No. 1.)

25 **III. STANDARD OF REVIEW**

26 Under 42 U.S.C. § 405(g), a district court may review the Commissioner's
27 decision to deny benefits. A court must affirm an ALJ's findings of fact if, when
28 applied against proper legal standards, they are supported by substantial evidence.

1 *Mayes v. Massanari*, 276 F.3d 453, 458-59 (9th Cir. 2001). “Substantial evidence
 2 . . . is ‘more than a mere scintilla[,]’ . . . [which] means—and means only—‘such
 3 relevant evidence as a reasonable mind might accept as adequate to support a
 4 conclusion.’” *Biestek v. Berryhill*, 587 U.S. ___, 139 S. Ct. 1148, 1154, 203 L. Ed. 2d
 5 504 (2019) (citations omitted); *Revels v. Berryhill*, 874 F.3d 648, 654 (9th Cir. 2017).
 6 Substantial evidence is shown “by setting out a detailed and thorough summary of
 7 the facts and conflicting clinical evidence, stating his interpretation thereof, and
 8 making findings.” *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998).

9 “[T]he Commissioner’s decision cannot be affirmed simply by isolating a
 10 specific quantum of supporting evidence. . . . Rather, a court must consider the
 11 record as a whole, weighing both evidence that supports and evidence that detracts
 12 from the Secretary’s conclusion.” *Aukland v. Massanari*, 257 F.3d 1033, 1035 (9th
 13 Cir. 2001) (citations and internal quotation marks omitted). “‘Where evidence is
 14 susceptible to more than one rational interpretation,’ the ALJ’s decision should be
 15 upheld.” *Ryan v. Comm’r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008) (citing
 16 *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005)); *see Robbins v. Soc. Sec.*
 17 *Admin.*, 466 F.3d 880, 882 (9th Cir. 2006) (“If the evidence can support either
 18 affirming or reversing the ALJ’s conclusion, we may not substitute our judgment for
 19 that of the ALJ.”). The Court may review only “the reasons provided by the ALJ in
 20 the disability determination and may not affirm the ALJ on a ground upon which
 21 [she] did not rely.” *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007) (citing *Connett*
 22 *v. Barnhart*, 340 F.3d 871, 874 (9th Cir. 2003)).

23 **IV. DISCUSSION**

24 Plaintiff contends the ALJ failed to properly consider her subjective symptom
 25 testimony. Pl. Br. at 4-11, Dkt. No. 16. In response, the Commissioner argues that
 26 the ALJ did properly evaluate her subjective testimony and, in any event, the ALJ
 27 found that Plaintiff’s treatment history undermined her allegations of disabling
 28 symptoms. Comm’r Br. at 2-8.

1 A. Subjective Symptom Testimony

2 There is a two-step process for evaluating a claimant's testimony about the
3 severity and limiting effect of the claimant's symptoms. *Vasquez v. Astrue*, 572 F.3d
4 586, 591 (9th Cir. 2009). "First, the ALJ must determine whether the claimant has
5 presented objective medical evidence of an underlying impairment 'which could
6 reasonably be expected to produce the pain or other symptoms
7 alleged.'" *Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9th Cir.
8 2007) (quoting *Bunnell v. Sullivan*, 947 F.2d 341, 344 (9th Cir. 1991) (en banc)).

9 Once satisfied, the ALJ must examine the entire case record, which includes
10 the claimant's own testimony, for evidence on the intensity, persistence, and limiting
11 effects of her symptoms. In evaluating the claimant's credibility, a court may
12 consider a multitude of factors, such as inconsistencies between the claimant's
13 statements, objective medical evidence, the claimant's daily activities, the claimant's
14 work record, and statements from healthcare providers or third parties about the
15 nature, severity, and effect of the symptoms. *Thomas v. Barnhart*, 278 F.3d 947,
16 958-59 (9th Cir. 2002). However, a lack of objective medical evidence substantiating
17 the claimant's statements about her symptoms by itself is not grounds for discrediting
18 her symptom testimony. *Id.* Additionally, the ALJ must take care not to pick and
19 choose only that evidence that bolsters his findings. *Holohan v. Massanari*, 246 F.3d
20 1195, 1208 (9th Cir. 2011); *see Ghanim v. Colvin*, 763 F.3d 1154, 1164 (9th Cir.
21 2014). If the ALJ discounts the claimant's testimony for lack of credibility, she must
22 provide specific, clear, and convincing reasons for doing so. *Brown-Hunter v.*
23 *Colvin*, 806 F.3d 487, 488-89 (9th Cir. 2015); *see Manor v. Kijakazi*, No. 22-0666,
24 2023 WL 5836483, at *5 (E.D. Cal. Sept. 8, 2023) (quoting *Valentine v. Comm'r*
25 *Soc. Sec. Admin*, 574 F.3d 685, 693 (9th Cir. 2009)) ("The ALJ must specifically
26 identify what testimony is credible and what testimony undermines the claimant's
27 complaints.").

1 B. Plaintiff's Testimony

2 At the administrative hearing, Plaintiff testified that Dr. Rajir Puri imposed
3 restrictions on her as to not strain her back. (AR 42.) She does not believe she can
4 go back to work full time “because [of] everything she goes through on a daily basis,”
5 like, “not being able to walk consistently.” (AR 42-43.) Plaintiff testified she is
6 unable to get out of bed somedays, but on days that she can, her hips and back are
7 unable to move by evening time. (AR 43.) She testified that surgery on her lumbar
8 spine in 2019 worsened her condition because it “limited [her in] everything”—she
9 is unstable and intermittently experiences numbness in her buttocks, hips, and
10 bladder, in addition to feeling stabbing pain in her buttocks, hips, and private area.
11 (AR 43-44.) The more Plaintiff walks, the worse off she feels; she can stand up and
12 walk for about 30 minutes before her legs get really weak, and she experiences a lot
13 of pain as if “everything’s just being crushed.” (AR 44.)

14 After Plaintiff sits straight up for about 20 minutes, she needs to lay back down
15 or walk around because she feels as though “gravity is just crushing everything.”
16 (AR 45.) Plaintiff further testified that she experiences pain in her neck and
17 shoulders; pain when moving her head side to side; and problems with her arms and
18 hands that lead her to “drop things all day long.” (AR 46, 53.) She can lift and carry
19 about 10 pounds, though not comfortably; any more weight than that would likely
20 cause her to drop the object. (AR 46-47.) She testified that because extending her
21 arms in front of her causes a lot of pain and headaches, she can only do so for about
22 two minutes before needing to drop them. (AR 47.) Plaintiff testified her bladder
23 has begun leaking throughout the day since having surgery on her lower back. (AR
24 47-48.) Her kids have been helping her more with house chores; she cannot sit in car
25 rides for longer than two hours; she can no longer hike or engage in woodworking.
26 (AR 48-49.) She feels it would be unsafe to work as a hairdresser because she drops
27 everything. (AR 51.) Plaintiff testified she had not yet undergone a second back
28 surgery because she wants her mother to be able to greet her in the waiting room after

1 the surgery and COVID restrictions at the time did not allow for that. (AR 52-53.)

2 1. Step 1: Underlying Impairment Reasonably Expected to Produce
3 Symptoms

4 Plaintiff must present objective medical evidence of an underlying impairment
5 “which could reasonably be expected to produce the pain or other symptoms
6 alleged.” *Lingenfelter*, 504 F.3d at 1036 (internal quotation marks omitted). Here,
7 Plaintiff presented objective medical evidence of an underlying impairment because
8 she was diagnosed with degenerative disc disease status post lumbar fusion (among
9 other conditions), and the disease could reasonably cause her to experience pain and
10 weakness in her arms and neck. (See AR 27, 91, 106, 275.) Because this first step
11 is satisfied, the Court proceeds to the second.

12 2. Step 2: Evaluating Plaintiff’s Subjective Symptom Testimony Against
13 the Entire Record

14 In deciding whether to discount Plaintiff’s subjective symptom testimony, a
15 court may weigh inconsistencies between Plaintiff’s statements, objective medical
16 evidence, her daily activities, work record, and statements from healthcare providers
17 or third parties about the nature, severity, and effect of the symptoms. *Thomas*, 278
18 F.3d at 958-59. To the extent the ALJ rejects this testimony, she must “provide
19 specific, clear, and convincing reasons.” *Brown-Hunter*, 806 F.3d at 489 (holding an
20 ALJ “does not provide specific, clear, and convincing reasons for rejecting a
21 claimant’s testimony simply by reciting the medical evidence in support of his or her
22 residual functional capacity determination”); *Christine B. v. Comm’r of Soc. Sec.*
23 *Admin.*, No. 22-01119, 2023 WL 5827678, at *4 (D. Or. Sept. 8, 2023); *Christopher*
24 *K. v. Comm’r, Soc. Sec. Admin.*, __ F. Supp. 3d __, 2023 WL 34445, at *3 (D. Or.
25 Jan 3, 2023).

26 Here, it is unclear how the ALJ considered Plaintiff’s testimony because she
27 did not link her conclusion about Plaintiff’s RFC to her hearing testimony. The ALJ
28 summarized Plaintiff’s hearing testimony but did not analyze its credibility in relation

1 to notes from Plaintiff's treating physicians, objective medical records, Plaintiff's
2 daily activities, work record, and other evidence. (See AR 27-28.) If the ALJ found
3 Plaintiff's hearing testimony not credible, she needed to have explained that finding
4 with specific, clear, and convincing reasons. *Brown-Hunter*, 806 F.3d at 494. The
5 ALJ here provided no such explanation. See *id.* Thus, there is no way to determine
6 whether Plaintiff's hearing testimony was discounted for legitimate reasons or
7 arbitrary ones. See *Orteza v. Shalala*, 50 F.3d 748, 750 (9th Cir. 1995); see also
8 *Rachel J. v. Comm'r, Soc. Sec. Admin.*, No. 22-00158, 2023 WL 5770621, at *9 (D.
9 Or. Sept. 6, 2023) (holding the ALJ's findings unsupported by substantial evidence
10 because the ALJ did not explain how one of plaintiff's participations in certain daily
11 activities undermined his testimony).

12 Further, the error was not harmless. An error is harmless only if it is
13 "inconsequential to the ultimate nondisability determination," see *Molina v. Astrue*,
14 674 F.3d 1104, 1115 (9th Cir. 2012), or if notwithstanding the legal error, "the
15 agency's path may reasonably be discerned," *Treichler v. Comm'r of Soc. Sec.*
16 *Admin.*, 775 F.3d 1090, 1098, 1099 (9th Cir. 2014) (citation omitted). Here, the
17 agency's path cannot be discerned because the ALJ's decision provided no
18 reviewable reasons for discounting or discrediting Plaintiff's testimony. The agency
19 asks the Court to find that the ALJ reasonably found Plaintiff's treatment history
20 undermined her allegation of disabling symptoms. Comm'r Br. at 5-8, Dkt. No. 19.
21 But the reasons supplied in the agency's brief are not reasons provided by the ALJ in
22 her decision, and it is not appropriate for this Court to speculate as to the grounds for
23 the ALJ's conclusions. "[T]he ALJ must provide some reasoning in order for [a
24 reviewing court] to meaningfully determine whether the ALJ's conclusions were
25 supported by substantial evidence." *Id.* at 1103 (citation omitted). Because there is
26 no such reasoning here, the ALJ's decision is reversed.

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